IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

(1) SAW No. 487 of 2001
JEEVAN SINGH
V/S
STATE OF RAJ & ORS.

(2) SAW No. 582 of 2001
VEER SINGH
V/S
STATE OF RAJ & ORS.

(3) SAW No. 583 of 2001
PEPA RAM
V/S
STATE OF RAJ & ORS.

Mr. M R SINGHVI, for the appellants
Mr. O. P.Boob, Addl. G.A.

Date of Order : 18.12.2007

REPORTABLE

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

BY THE COURT (PER HON'BLE GUPTA,J.):

These three appeals involve common question of law and facts, and arise out of a common judgement of the learned Single Judge, deciding three writ petitions, and are therefore, being decided by this common order.

The learned Single Judge, by order dated 24.10.2000, has dismissed the three writ petitions. The

case of the petitioners was, that a Commission was constituted to inquire into the affairs of Kumher (Bharatpur) incident, by notification dated 07.06.1992, and for that purpose Home Department issued orders dated 02.07.1992, produced with the writ as Annex.1, whereby certain temporary posts were created for a period of three months, and it was mentioned therein, that posts enumerated at Serial No.3 to 7 shall be filled in by deputation or by re-employment of superannuated employees, while the posts enumerated at Serial No.8 to 10 will be filled in by fresh recruitment. It was also stipulated that the posts shall be temporary, and the incumbent shall work on temporary basis, uptill the survival of the tenure of the Commission. The tenure of the Commission was extended from time to time, and accordingly, simultaneously the tenure of the employees was also extended from time to time, till the tenure of the Commission was over. The three petitioners belong to the category of posts enumerated at Serial No.9 & 10. Inasmuch as the appellants in appeal No.487 and 583 were the employees on the post enumerated at Item No.10, while the appellant in Appeal No.832 was holding the post enumerated at Item No.9. After the Commission submitted its report, the services were not extended, and according to the petitioners, the last extension was granted vide Annex.14, and then vide order dated 2nd September 1996, the three petitioners were declared surplus, and were sent to the Collector, for absorption. However, the Collector vide the

impugned order declined to absorb them, on the ground, that the employees do not fall within the category of "surplus employees", being not eligible to be declared surplus, therefore the absorption was declined. Challenging this action of the State, the writ petitions were filed.

The contention raised in the writ petitions was, that the Government has no jurisdiction to decline to treat the petitioners as surplus, as a declaration to this effect has to be made by the appointing authority, which, in the present case has been made, and for that purpose reliance has been made to Rule 3(l) of the Rajasthan Civil Services Absorption of Surplus Personnel Rules, 1969. It has been contended, that admittedly the services of the petitioners are governed by the RSR, and they have been declared surplus, and that being so, the Government has no authority to treat the petitioners not to be surplus employees. It is further contended, that even temporary employees, appointed on temporary posts, are also liable to be declared surplus, and are eligible for absorption.

The State Government contested the writs, by contending inter-alia that the appointments given were co-terminus with the tenure of the Commission, and the petitioners are ineligible to be declared surplus under the Rules of 1969. It was contended, that surplus employees are those, who are so declared by the Government, or by the

appointing authority under the directions of the Government, and when both these conditions are lacking, they could not be declared surplus, and they were rightly declined to be absorbed. Since it was a tenure appointment, there was no point of declaring them surplus. It is also contended, that the conditions of the service of the petitioners were not governed by RSR, rather they were governed by the terms of the appointment order, which is purely of special nature, for ad-hoc purposes, being until the term of the Commission. Obviously, RSR would not apply to them. It was also contended, that the Government has issued guidelines vide Circular dated 20.04.1992, which provides a check list for declaration of surplus, and the said list shows, that for being declared as surplus, an employee should be appointed as per the Service Rules. Then before an employee is declared surplus, a notice has to be given to the absorption committee, which has not been done, then regarding temporary employees, it has been specifically provided, that temporary employees, after specified date are not to be kept in employment, except for those recruited through RPSC, which posts are within the purview of RPSC. Thus, it is contended that petitioners are not entitled for absorption, and the absorption has rightly been declined.

The learned Single Judge found, that it is not the petitioners' case, that they have been appointed by the

advertisement of the posts, or calling their names through employment exchange, and even they cannot claim that they have been appointed under the Rules, as they have not been appointed by following the procedure, consistent with the provisions of Article 14 & 16 of the Constitution of India. Then it has been found, that the petitioners were holding tenure posts, and therefore, they certainly cannot claim the benefit of Rules of 1969, as the tenure posts come to an end automatically, by efflux of tenure of their appointment, and that the persons appointed temporarily / ad-hoc, cannot agitate that they are not bound by the terms and conditions, incorporated in the appointment letter. Then clause (l) of rule 3 of Rules of 1969 was also considered, and it has further been found, that in the instant case, there is no declaration by the Government, or by the appointing authority at the direction of the Government, that they are surplus, the posts have not been abolished as a measure of economy or on administrative ground. Likewise it was also found, that it is not shown that the Government has not decided to terminate the services of the petitioners and to retain them on absorption on other posts. It was found, that admittedly the posts the petitioners were holding, stood abolished by efflux of time, as they were created co-terminus with the tenure of the Commission, and thus none of the conditions required by rule 3(l) were fulfilled. Thus it was found, that the petitioners cannot claim, to fall in the category

of "surplus employee", and as such, are not entitled to the benefit of the rules, consequently, the writ petitions were dismissed.

Arguing the appeal, it was contended, that at best the petitioners were temporary employees, appointed on temporary posts, and according to Rule 7, such surplus persons who were holding temporary posts, are to be absorbed on temporary, or ad-hoc posts, and therefore the petitioners were also required to be absorbed on temporary posts. Then referring to Rule 3 (m) it was contended, that within meaning thereof, the petitioners' appointment very much falls within expression "temporary appointment". It was then contended, that the basic object of the Rules is, that if a person has been given appointment on a post, even on temporary basis, or even on temporary basis on a temporary post, still in the event of abolition of the post, the employee is not required to be left high and dry, and should be absorbed in some other department on some equivalent post, unless the Government takes a decision not to absorb him. It was then contended, that taking literal meaning of the requirement, about the Government having not decided to terminate the services of the petitioners and to retain them on absorption on other posts, will have the effect of taking away the soul and spirit of Rules of 1969, as the rules have been framed, predominantly for the purpose of ensuring, that the employee is not left high and

dry. Then the learned counsel invited our attention to the proforma, available at page 518 of the Rajasthan Local Laws by Jindal, Volume VI. This is the proforma for furnishing particulars of surplus employees, and is required to be filled by the Head of the Department, giving particulars of the appointee. Thus according to the learned counsel, before declaring surplus, this proforma was required to be sent. Though not submitted, but probably he means, that had this proforma been submitted to the Government, some orders must have been passed.

Learned counsel for the State supported the impugned judgement.

We have considered the submissions, and have perused the material on record.

In our view of course, the nature of appointment accorded to the petitioners, may tantamount to temporary appointment, as, obviously it was a temporary appointment, on a temporary post, and was not an ad-hoc appointment, therefore, to that extent there is no dispute. Then so far as reference to Rule 7 is concerned, that is also not a point of dispute, inasmuch as that rule provides the procedure for absorption. According to this rule the absorption committee is to allot surplus persons to the departments for services, wherein equated or equivalent or

lower vacant posts may be available, and it is for that committee to specify the vacant post or posts, against which the surplus employee is to be absorbed, and it is on receipt of the order of the absorption committee, that the appointing authority is to issue orders for appointment, and such appointment is to be substantive, officiating or ad-hoc/temporary on such post or posts, as indicated in the table, and a look at the table shows, that the nature of appointment to be given, is co-related with the post held by the surplus employee, on the date he is declared surplus. Thus, this shows, that after the employee is declared surplus, and is ordered to be absorbed, what is to be seen is, the nature of the post held, as is provided by Rule 7. Of course, this provision does show, that these rules do contemplate absorption of temporary employee as well. To that extent, there is no dispute in the contention of the learned counsel for the appellants, that even temporarily appointed employees can be absorbed.

However, the question involved in the present matter is entirely different, inasmuch as the question precisely is, as to whether the petitioner-appellants fall within the four corners of the definition of "surplus personnel" or "surplus employee" as provided under Rule 3 (l) of the Rules of 1969. Obviously, if they fall within this definition, then all consequences, enumerated in the Rules flow, including their entitlement to absorption.

However, if they do not fall within this definition, then since the rule apply only to “surplus employee” or “surplus personnel”, the petitioners can claim no benefit.

Since this is the basic question, we gainfully quote the language of Rule 3(l) which reads as under :-

> (l) 'Surplus Personnel' or 'surplus employee' means the Government servant to whom the Rajasthan Service Rules, 1951 apply and who are declared surplus by the Government or by the Appointing Authority, under directions of the Government on their being rendered surplus to the requirement of a particular department of the Government due to the reduction of posts or abolition of offices therein as measures of economy or on administrative grounds but in whose case the Government decides not to terminate their services but to retain them in service by absorption on other posts.
>
> Provided that the Committee, appointed under the various service Rules for adjudging suitability by screening either as an exception to general methods of recruitment, or as initial constitution of service, may ex-gratia recommend, if any of the employees with more than three years of service on a post for which he is to be screened is not adjudged suitable and if thereafter has no right to be appointed on a lower post, for such lower post being offered to him by absorption and thereupon such an employee shall be treated as Surplus Employee under the provisions of these rules and such person may be absorbed on the lower post on the recommendations of the Committee subject to the conditions laid down by it”.

A bare reading of this definition shows, that it lays down multi-fold requirements, in order to enable a

person/employee to claim to be “surplus personnel” or “surplus employee”. The first requirement is, that Rajasthan Service Rules 1951, should apply to him, second co-existent requirement is, that he must have been declared surplus by the Government, or by the appointing authority under the directions of the Government, third requirement is, that such declaration should have been made, on being rendered surplus to the requirement of a particular department of the Government, due to reduction of posts, or abolition of offices therein, which may be by way of a measure of economy, or on administrative ground, and the next, again co-existent requirement is, “<u>but in whose case the Government decides not to terminate their services but to retain them in service by absorption on other posts</u>”.

In the present case, as the things appear, it cannot be said, that all the requirements catalogued above, of Rule 3(l), are fulfilled.

In the first place, the petitioners-appellants were appointed by the Commission, for a specific tenure, and there is nothing to show, that RSR applied to them. Secondly, we have our own doubts, as to whether the Commission could be said to be department of the government, or not. Prima-facie, as we stand advised, as on the date, we are of the view, that the Commission cannot be said to be a department of the government. With this, the

only requirement appearing, purportedly to have been fulfilled is, that they purport to have been declared surplus by the appointing Authority. But then, in this regard also, there is nothing to show, that they were so declared surplus, "under the directions of the government". Looking to the nature of appointment, i.e. the posts having been created, specifically for the Commission, fixing their tenure to be co-terminus of the Commission, a positive direction as contemplated in Rule 3(l), viz., about the government having taken decision not to terminate their services but to retain them in service by absorption on other posts, was a sine-qua-non, for entitling the employees to fall within the definition of "surplus employee". Considering the contention of the learned counsel, to read down this part of the provision, or not to take a literal meaning of this requirement also, even an overall reading of the provision does show, that either the declaration of surplus by the appointing authority must be shown to have been under directions of the government, or there should otherwise be something to show that government decided not to terminate their services but to retain them in service by absorption on other posts. And this is fully in accordance with the letter, soul and spirit of the rules. In the present case, even at the cost of repetition it may be observed, that it is not shown on the side of the petitioners-appellants, either that the appointing authority had declared them surplus under the directions of

the government, or that any decision had been taken not to terminate their services but to retain them in service by absorption on other posts. That being the position, the mere fact that the appointing authority in the Commission purportedly declared them surplus, thereby they do not fall within the expression "surplus employee" within the meaning of Rule 3(l).

Then coming to the contention on the anvil of the proforma referred to above, in our view, reliance on this proforma is wholly misconceived, as this proforma forms part of the order dated 23.07.1966, which was an order issued in the matter of absorption. That order purported to be a complete mechanism in the matter of absorption of the employees, who had put in particular period of service, as on the specified date, and the Absorption Committee was constituted, the informations supplied, directions were given for absorption, and so on and so forth; while the rules have been framed in the year 1969. Obviously in supersession of the then existing rules and orders. Significantly under these Rules, there is no such requirement, that before declaring any person as surplus, the appointing authority shall furnish the information to the State, in any particular proforma. Reasons are not far to seek, inasmuch as the languages of the rules clearly contemplates, an employee to have been declared surplus, either by the State Government, or by the appointing

authority under the directions of the Government, Obviously, if an employee is declared surplus under the directions of the Government by the appointing authority, then it would mean, that he falls within the definition of "surplus employee" or "surplus personnel". The direction may be necessitated on account of the employee being rendered surplus in particular department of the Government, due to reduction of posts, or abolition of offices therein, on account of measure of economy, or on administrative ground. However, where an appointing authority, irrespective of the fact, as to whether he is an appointing authority in a particular department, or is an appointing authority in a Commission, like the case in hand, proceeds to declare an employee surplus, not under the directions of the Government, then unless it is positively shown, that in respect of such employee/s, the Government has decided not to terminate his service, and to retain him by absorption on a certain post, it cannot be said, that he would fall within the definition of "surplus employee" within the meaning of rule 3(l) of 1969 Rules.

To repeat, we may observe, that the Rules have been framed for regulating the absorption of surplus persons in connection with the affairs of the State and their conditions of service. They have been framed in supersession of the other rules or orders in force in that regard, and a total reading of the Rules does shows, that

these rules only provide for constitution of the Committee for absorption of the surplus employees, declaration of equated posts, procedure for absorption and other consequential matters, including procedure for adjudging suitability, and substantive appointment of surplus employees in certain cases, and so on. But then, everywhere the expression used is the "surplus employee" or the "surplus personnel". In that view of the matter again, the petitioner, in order to be entitled to claim any relief, has to satisfy, that he was a "surplus employee" within the meaning of Rule 3(l). In the present case, the sequence of the documents, as produced by the petitioners would show, that the posts were created in the Commission, for specified period of time, and co-terminus with the Commission, then appointments were given by the Secretary to the Commission, which went on being extended from time to time, consequent upon extension of the tenure of the Commission, and after the tenure of Commission came to an end, the Secretary of the Commission purportedly declared the petitioners to be surplus. It has nowhere been shown from the side of the petitioners, that the order declaring the petitioners surplus was passed by the Secretary, under the directions of the Government. It is still another thing, that it is not shown as to what was the Absorption Committee for the employees like the petitioners, nor that even the Secretary to the Commission, even purported to forward the petitioner to the said Absorption Committee.

It is required to be grasped, that on abolition of posts, or the Government deciding to reduce the posts, the employee has no right to continue in service as such. But then, if he is required to be declared surplus, and is so declared, to be absorbed in service by being continued, then that can only be done in accordance with the provisions of law, which in the present case are the Rules of 1969. Obviously, where the post is abolished, or the posts are reduced, there has to be conscious decision of the State, not to terminate the services, but to retain them in service, which can be made, either by order, or by way of issuing direction to the appointing authority, to declare the employee as surplus. But in either case, simply because the employee was appointed on a post, co-terminus with the Commission, and the services have come to an end with the completion of the tenure of the Commission, then in that event, by itself, it cannot be said, that the petitioners became entitled to be absorbed, under the Rules of 1969, simply because the appointing authority in the Commission, purportedly declared such employee, as surplus.

Thus, for the reasons given by the learned Single Judge, so also the above additional reasons, we are of the opinion, that the petitioners are not entitled to any relief in the writ petitions, and consequently, we do not find any ground to interfere in the impugned order passed

by the learned Single Judge. The three appeals are therefore dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

jpa/